IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 666 of 2002

WITH

FIRST APPEAL NO. 667 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MARDIA CHEMICALS LIMITED
Versus
GUJARAT ELECTRICITY BOARD

Appearance:
MR SAURABH SOPARKAR, SENIOR ADVOCATE FOR MR DEVESH A BHATT for the Appellant in both appeals
MR NIRAV K. MAJMUDAR for Respondent in both the appeals

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 04/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. Both these appeals are directed against the common order dated 22nd March 2002 of the Gujarat Electricity Regulatory Commission (hereinafter referred to as `the Commission') passed in Petition No. 63 of 2002 and Petition No. 64 of 2002, whereby the Commission rejected the applications of the appellant seeking stay of the operation and execution of the notice dated 30th January 2002 issued by the Gujarat Electricity Board under section 24(1) of the Indian Electricity Act, 1910 (hereinafter referred to as `the Act of 1910'), on the ground that the Commission had no jurisdiction to grant such relief under the provisions of the Electricity Regulatory Commission's Act, 1998 (hereinafter referred to as `the said Act'). Since the interim relief prayed for in the two Petitions No. 63 and 64 of 2002 was identical, the Commission heard and disposed of both the petitions together, upholding the preliminary objection raised on behalf of the respondent - Board against its jurisdiction.

1.1 When these appeals came up for admission hearing, in view of the caveat having been filed on behalf of the Board, the learned counsel for the Board also appeared at that stage. The learned counsel for both the parties, having regard to the fact that the appeals were argued at length and the entire record was made available to the Court by supplying the paper-book, requested the Court to treat the elaborate hearing as a final hearing. We have accordingly heard both these appeals filed under section 27 of the said Act finally at the admission stage itself, at the request of the learned counsel for both the sides.

2. The appellant is a Registered Company engaged in the business of manufacture and sale of chemicals. The Commission, constituted under the said Act, had earlier on being moved by the Gujarat Electricity Board for fixation of tariffs for various categories of consumers, made a Tariff Order dated 10th October 2000 in Case No. 19 of 1999 determining the tariffs for various consumer categories, including HTP-IV category. While those proceedings were undertaken by the Commission in exercise of its functions under section 22 of the said Act, the appellant Company had asked for a special tariff by Application No. 15 of 1999 filed on 4th June 1999. In

para 9.8.8 of the Tariff Order dated 10th October 2000, the request of the appellant for a special tariff was rejected by the Commission.

2.1 A separate order dated 27-11-2000 was also made on Application No. 15 of 1999 by the Commission, dealing in detail with the claim of the appellant for special electricity tariff. In para 11 of that order, the Commission noted that it had determined the electricity tariffs of various consumer categories by its order dated 10-10-2000 in Case No. 19 of 1999 and in the said Tariff Order, the Commission had also dealt with the HTP-IV tariff as well as tariff in respect of the present appellant, observing in para 9.8.8 that, as regards the other issues raised by the appellant, separate orders would follow. After considering the contentions of the appellant, including the contention that high tariff would make it uneconomical for the Company to run its industry, and that the Company was situated in a backward area, and further that its total consumption of electricity was very high, it was held that section 29(3) of the said Act did not confer any power of the Commission to give special tariff to any particular individual consumer on such grounds. It was held that the scheme of section 29 of the Act of 1998, which provided guidelines to the Commission and laid down principles for determination of tariff did not enable the Commission to lay down special tariff for any consumer. It was also held that the appellant had not made out a case for award of a special tariff under section 29(3) of the Act of 1998. The application of the appellant for special tariff was thus rejected on 27-11-2000.

2.2 It appears that, during the pendency of the above Application No.15 of 1999, the supply of electricity energy to the appellant was cut off by the Gujarat Electricity Board on the ground of its failure to pay the arrears running in crores of rupees, and an application was made to the Commission for getting re-connection. In that application, the Commission made an order on 28th December 1999 requiring the GEB to restore the supply on the appellant's paying Rs.50 lakhs in seven days and continuing to pay the charges from December 1999 till the disposal of the main application. That order was challenged before the High Court by the Gujarat Electricity Board in First Appeal No. 8073 of 1999. It appears that, during those proceedings, the parties settled the dispute outside the Court and the appeal, therefore, came to be disposed of on 3rd October 2001. As per the arrangement between the parties reached outside the Court, the dues of the Gujarat Electricity

Board of Rs.53 crores were agreed to be paid by the appellant in monthly installments of Rs.10 lakhs till the appellant was rehabilitated in the manufacturing and commercial business under the SICA. Later on, the instalment was raised to Rs.25 lakhs by mutual agreement. However, since the dues were mounting up and had reached a figure of more than Rs.83 crores and rehabilitation was not forthcoming, it was decided that no further indulgence could be shown to the appellant and the facility of paying dues by installments could not be continued any more. This decision was taken at a meeting chaired by the Minister of Industries on 12th December 2001 and it was attended also by the Minister for Energy and other high officials as well as the representatives of these parties.

2.3 Thereafter, the impugned notice dated 30th January 2002 came to be issued by the Board calling upon the appellant to pay the entire dues of Rs.85,28,54,838=84 ps. That notice shows that it was issued under section 24(1) of the Indian Electricity Act, 1910. The amount demanded as the dues outstanding on 31-12-2001 was of energy bill including the arrears, and the delayed payment charges. The appellant was informed that if the said amount was not paid within 10 days from the date of issuance of the notice, its electric supply will be cut off without further notice until the amount due together with expenses for cutting off and re-connecting the supply was paid to the Gujarat Electricity Board.

3. On 5th February 2002, the appellant preferred Petition No. 63 of 2002 before the Commission praying for quashing the said notice dated 30th January 2002 and also seeking interim relief therein against disconnection of the power supply on the ground of the non-payment of the dues demanded in the notice. In the application, it was alleged that the electric supply was being cut off at the instance of a rival and the action was therefore malafide and that the question whether the appellant was a Sick Company was under consideration before the B.I.F.R.

3.1 The appellant also filed a review petition in the Application No. 15 of 1999 against the order dated 27th November 2000, rejecting the appellant's prayer for the special tariff. In the said review petition dated 28-6-2001 seeking review under Regulation 105(1) of the Gujarat Electricity Regulatory Commission (Conduct of Business) Regulations of 1999, the appellant had prayed for re-consideration of the order passed by the

Commission rejecting the appellant's prayer for special tariff. An application was made on 13-2-2002 in the review application for interim relief on the ground that the appellant apprehended that the respondent may raise issue as to the jurisdiction of the Commission in the other petition (63 of 2002), and therefore, in order to avoid such objection, this application was filed seeking interim order in Case No. 15 of 1999 (in which the review application was made). It was prayed that, pending the hearing and final disposal of Case No. 15 of 1999, the Commission may stay the implementation and execution of the notice dated 30th January 2002, and preventing the respondent from disconnecting the power supply pursuant to that notice.

3.2 Thus, in both the above applications for interim relief which have been heard and decided together by the Commission, the prayer was identical and was aimed against the implementation of the notice issued by the GEB under section 24(1) of the Act of 1910.

4. A preliminary objection was raised on behalf of the Board urging before the Commission that it had no jurisdiction to stay the implementation and execution of the notice dated 30th January 2002 issued by the Board under section 24(1) of the Indian Electricity Act, 1910. The Commission held that, though it had powers to issue interim orders under Regulation 68, since it had no jurisdiction to intervene in the matter of recovery of arrears by issuance of a notice under section 24(1) of the Act of 1910, it had no jurisdiction to issue any interim order affecting the implementation of such notice. It was held that the Commission was not the forum which could adjudicate upon the disputes between consumers and the Board on the question of breach of the supply agreement. In paragraph 59 of its order, the Commission held that it had no jurisdiction, power or authority to entertain and decide the petitions taken out by the applicant. Both the petitions for interim orders were, therefore, disposed of, leaving it open to the appellant to approach the appropriate forum for the redressal of their grievances.

5. It was contended by the learned senior counsel appearing for the appellant in these two appeals that the review proceeding under Regulation 105 of the Regulations of 1999 framed by the Commission was a proceeding in continuation of the original proceeding regarding fixation of special tariff decided on 27-11-2000 by rejecting the application (No.15 of 1999) of the appellant. Therefore, during the pendency of the review

proceeding, the Commission had power under Regulation 68 to pass appropriate interim orders. It was further argued that the Commission had, on an earlier occasion, made interim order on 20-12-1999 requiring the Board to re-connect the electric supply and though that order was not implemented due to the appeal filed before the High Court by the Board, during the pendency of the appeal proceedings, a settlement was arrived at out of Court and the appeal was withdrawn. It was submitted that it was, therefore, not open for the Commission to take up a different stand on a subsequent application by saying that it had no jurisdiction in the matter. It was also argued that the interim order sought by the appellant was not beyond the scope of the main review application which was for fixation of special tariff for the appellant. It was submitted that, if special tariff as claimed by the appellant was fixed by the Commission, then nothing would be payable and no ground for taking action under section 24(1) of the Indian Electricity Act, 1910 would survive. It was further submitted that, in view of the draft amendment made in the review application by adding paragraph 8(A) in the Application No. 63 of 2002 in which it was contended that, the Commission was concerned with promoting efficiency and economy in the operation of the Gujarat Electricity Board, the Commission had jurisdiction to decide the issue. Referring to section 52 of the Act, the learned senior counsel argued that the provisions of the said Act had an overriding effect over other laws and the Commission was, therefore, empowered by sections 22(1)(a) and (d), 22(2)(c), (d) and (n), 29(2)(c), (d), (e) and (f) and section 25 (iv) of the said Act to stay the impugned notice under section 24(1) of the Indian Electricity Act, 1910. It was submitted that, under the scheme of the said Act, protection of the interest of consumers was one of the factors to be considered while fixing the tariffs and the interest of consumers would include interest of a particular consumer and therefore, if the act of the utility was contrary to the interest of a consumer, such an issue would fall within the jurisdiction of the Commission. It was, in the alternative, argued that if it is found that an act of the utility does not promote efficiency or economy, then the Commission has power to give necessary directions while fixing tariff and that, what can be done by fixing the tariff could also be done independently, and therefore, the Commission has jurisdiction to entertain a dispute against the validity of the impugned notice. It was submitted that, on the ground of protection of consumer interest and promotion of efficiency and economy in electricity industry, the Commission had jurisdiction to make such interim orders.

6. The learned counsel appearing for the respondent Board supported the reasoning contained in the order of the Commission and argued that, even though the Commission had power to issue interim orders under Regulation 68, such power cannot be exercised when the Commission had no jurisdiction to grant the main relief against the notice issued under section 24(1) of the Act of 1910. The Commission, according to him, could not have examined the validity of such a notice and had no power to set it aside. Therefore, it had no jurisdiction to grant any interim relief against such a notice. It was submitted that the Gujarat Electricity Board was bound to charge the consumer as per the tariff and if payment was not made, it would be justified in proceeding to disconnect the supply under section 24(1) of the Act of 1910. He submitted that the functions of the Commission centered around fixation of tariff and therefore, the dispute sought to be raised by the consumer against the validity of notice under section 24(1) of the said Act could not have been gone into by the Commission. It had, therefore, rightly held that it had no jurisdiction in the matter. Relying upon the decision of the Supreme Court in Consumer Action Group v. State of T.N., reported in (2000) 7 SCC 425, he submitted that no interim relief could be granted, which would have an adverse effect on the public at large.

7. In order to ascertain whether the Commission had jurisdiction to go into the validity of a notice issued under section 24(1) of the Act of 1910 by the Board, it would be essential to examine the provisions of the said Act having bearing on the functions of the Commission.

7.1 The preamble of the Act of 1998 shows that it is an Act to provide for:

(i) The establishment of a Central Electricity Regulatory Commission and State Electricity Regulatory Commissions,

(ii) Rationalisation of electricity tariff,

(iii) Transparent policies regarding subsidies,

(iv) Promotion of efficient and environmentally benign policies,

and for matters connected therewith or incidental thereto.

7.2 Chapter V of the said Act provides for powers and functions of the State Commission and Chapter VI for energy tariff. Under section 22(1), the State Commission is entrusted with the following functions :-

"[a] to determine the tariff for electricity, wholesale, bulk, grid or retail, as the case may be, in the manner provided in section 29;

[b] to determine the tariff payable for use of transmission facilities in the manner provided in section 29;

[c] to regulate power purchase and procurement process of the transmission utilities and distribution utilities including the price at which the power shall be procured from the Generating Companies, generating stations or from other sources for transmission, sale, distribution and supply in the State;

[d] to promote competition, efficiency and economy in the activities of the electricity industry to achieve the object and purposes of this Act."

Sub-section (2) of section 22 empowers the State Government to confer any of the functions enumerated therein. Sub-clauses (c), (g) and (n) of sub-section (2) of section 22, on which reliance was placed on behalf of the appellant, are re-produced hereunder :

"[a] xxxxx

[b] xxxxx

[c] to regulate the operation of the power system within the State;

[d] xxxxx

[e] xxxxx

[f] xxxxx

[g] to set standards for the electricity

industry in the State including standards relating to quality, continuity and reliability of service;

[h] xxxxx

[n] to adjudicate upon the disputes and differences between the licensees and utilities and to refer the matter for arbitration;

[o] xxxxx "

7.3 Under section 25, the objects of the State Advisory Committee which is a creature of the State Commission are indicated and reliance was placed on the following clauses :-

"[ii] matters relating to quality, continuity and extent of service provided by the licensees;

[iii] xxxxx

[iv] protection of consumer interest; and

[v] xxxxx "

7.4 Section 26 of the said Act contemplates representation of `interest of the consumers'. On the basis of this provision, it was argued that individual consumer's interest also can be gone into by the State Commission.

7.5 Section 29 of the said Act empowers the State Commission, inter alia, to determine tariffs in accordance with the provisions of the said Act for supply of electricity including retail electricity. As provided by section 29(2), the terms and conditions for fixation of tariffs are to be determined under the Regulations fixed by the Commission, keeping in view the guidelines contained in clauses (a) to (g). Reliance was placed on clauses (d) and (e), which are re-produced hereunder :-

"[a] xxxxx

[d] the factors which would encourage efficiency, economical use of the resources, good performance, optimum investments, and other matters which the State Commission considers appropriate

for the purposes of this Act;

[e] the interest of the consumers are safeguarded and at the same time, the consumers pay for the use of electricity in a reasonable manner based on the average cost of supply of energy;

[f] xxxxx "

7.6 Section 52 of the said Act lays down that, save as otherwise provided in section 49, the provisions of the Electricity Regulatory Commissions Act, 1998 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act. On the strength of this provision, it was argued that, notwithstanding the provisions regarding notice of demand and disconnection of supply of electricity contained in the Act of 1910, the Commission can, for protection of interest of a consumer and for improving level of efficiency, exercise power to control and regulate supply of electricity to a particular consumer even in the event of his non-payment of electricity dues.

7.7 Section 58(1) of the said Act empowers the State Commission to make regulations consistent with the Act and the Rules made thereunder to carry out the purposes of the Act. This would mean that the Regulations made by the Commission should be read in a way consistent with the provisions of the said Act. Sub-section (2) of section 58 of the said Act, inter alia, empowers the Commission to make Regulations as to the manner in which charges for energy may be determined under section 29(2) of the Act.

8. In exercise of the power to frame Regulations, the State Commission has framed the Gujarat Electricity Regulatory Commission (Conduct of Business) Regulations, 1999. Regulation 18 thereof provides for the participation of consumer associations. Regulation 62 provides that the orders of the Commission would be in a judgement form and such judgement cannot be altered except for clerical or arithmetic mistake or error arising from any accidental slip or omission or on review of the judgement in accordance with the Regulation 105. Regulation 68, on which reliance has been placed, reads as under :-

"Interim Orders :

68. The Commission may pass such interim

orders as the Commission may consider appropriate at any stage of the proceedings, having regard to facts and circumstances of case, where such interim orders are sought."

8.1 Chapter III of the Regulations provides for arbitration of disputes between the licensees and utilities. The word `licensee' is defined in section 2(f) of the said Act and it means a person licensed under Part II of The Indian Electricity Act, 1910 to supply energy or a person who has obtained sanction under section 28 of that Act to engage in the business of supplying energy (but does not include the Board or a Generating Company]. The word `utility' as defined in clause (l) of section 2 of the said Act means any person or entity engaged in the generation, transmission, sale, distribution or supply, as the case may be, of energy. Thus, in the Chapter which provides for arbitration of disputes in the said Regulations, there is reference only to disputes between licensees and utilities and there is no provision for resolution of any disputes between the consumers and the utilities.

8.2 Chapter V of the Regulations provides for "Tariff Regulations", and Regulation 78 provides that, no entity engaged in transmission, distribution and supply of electricity, shall charge their customers any tariff for supply of electricity without the general or specific approval of such tariff by the Commission. Regulation 84 provides that, entities engaged in transmission, distribution and supply of electricity who are required to get their tariff approved by the Commission, shall evolve tariff proposals based on the terms and conditions notified by the Commission and shall submit the same for approval, in accordance with the procedure prescribed by the Commission. Under Regulation 86, the Commission may approve the proposed tariff on such stipulations as may be considered appropriate and as may be specified in the Order. By Regulation 88, it is provided that the utilities concerned shall publish the tariff as approved by the Commission in the manner as may be prescribed. The tariff so published shall be in force until any amendment is approved by the Commission and published.

8.3 Thus, once the Tariff Order is made by the Commission, the Gujarat Electricity Board is bound by such Tariff Order and it remains in force unless it is amended by the Commission. The GEB cannot charge its customers any tariff for supply of electricity in a manner different from the tariff approved by the

Commission under its Tariff Order.

8.4 Regulation 105(1), which relates to review of decisions, directions and orders of the Commission, on the basis of which, it was urged that the review application having been filed for fixing special tariff for the appellant, it was a proceeding pending and therefore, the interim order could be made under Regulation 68 of the nature sought for, is re-produced hereunder :-

> "105(1) Any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decision / order was passed by the Commission or on account of some mistake or error apparent from the face of record, or for any other sufficient reason, may apply for review of such order within 60 days of the date of decision / order to the Commission."

9. It is obvious that mere existence of review power under Regulation 105 or the power to pass interim orders under Regulation 68 cannot enlarge the scope of the jurisdiction of the Commission and these Regulations cannot confer power larger than the one conferred by the said Act. These Regulations are framed by the Commission and have to be read in a manner consistent with the provisions of the said Act. Therefore, if the Act confers no power on the Commission to adjudicate upon any dispute in respect of disconnection of electricity supply to the consumers due to non-payment of electricity bills, the power to review its tariff determination under Regulation 105 or to issue interim orders under Regulation 68 during the proceedings of tariff determination, cannot create a new power not conferred on the Commission by the Parent Act, especially when such power is specifically provided for in section 24(1) of the Indian Electricity Act, 1910 and vested in a different statutory authority.

10. The functions of the State Commission which is constituted under the said Act, which provides for rationalisation of electricity tariff, policies regarding subsidies and promotion of efficient and environmentally benign policies, as proclaimed in the preamble, center

around determination of tariff for electricity. The four functions enumerated in section 22(1) are :

(i) determination of tariff for electricity, wholesale, bulk, grid or retail in the manner provided in section 29,

(ii) determination of tariff payable for use of transmission facilities in the manner provided in section 29,

(iii) to regulate power purchase and procurement process of the transmission utilities and distribution utilities, and

(iv) to promote competition, efficiency and economy in the activities of the electricity industry to achieve the objects and purposes of the Act.

None of these four functions empower the Commission to go into any individual dispute that may be raised by a consumer of electricity against the action that may be taken by the Board against him for non-payment of the dues payable for the electricity supplied.

10.1 Even the three clauses namely, clauses (c), (g) and (n) of sub-section (2) of section 22, which are the additional functions conferred on the Commission by a notification, do not at all empower the Commission to go into such individual disputes between the consumer and the supplier of electricity. Under Clause (c), the function is to regulate the operation of the power system within the State. Clause (g) relates to setting standards for the electricity industry in the State, including standards relating to quality, continuity and reliability of service. These have nothing to do with the validity of a notice of recovery of the dues for supply of electricity. Even Clause (n) refers only to adjudication upon the disputes and differences between the licensees and utilities, which both terms are defined as aforesaid, and there is no scope for reading the disputes between the consumers and the Gujarat Electricity Board in the said clause. The function of the State Advisory Committee which is the creature of the State Commission created to advise the Commission, inter alia, on protection of consumer interest, as provided in

Clause (iv) of section 25 of the said Act, cannot be read so as to create jurisdiction in the Commission to entertain a dispute between a consumer and the Board arising due to the non-payment of the electricity dues. The interest of consumers as a class is undoubtedly to be kept in mind and that is why, section 26 empowers the Commission to authorise any person as it deems fit to represent the interest of the consumers. But, that obviously is a factor which has a bearing on framing of the tariff and no power to adjudicate over individual disputes that may arise between the customers and the Board for non-payment of dues can be read in that provision.

10.2 Section 29 again emphasizes the nature of the function of the State Commission, which is determination of tariff, inter alia, for supply of electricity including retail supply. It enjoins a duty on the State Commission to determine the tariff in accordance with the provisions of the Act. Sub-section (2) of section 29 lays down the guidelines on the basis of which the Commission shall determine by regulations the terms and conditions for the fixation of tariff. These guidelines for making regulations laying down terms and conditions for the fixation of tariff require factors mentioned therein to be taken into account by the Commission while determining the tariff. The general guidelines that the factors which would encourage efficiency, economical use of resources, good performance as well as interest of consumers should be taken into account, as provided in clauses (d) and (e), cannot be read to spell out any power of the Commission to adjudicate upon the disputes between the consumer and the Board. Even if the Commission may have power under section 29(3), which expects it not to show any undue preference to any consumer of electricity, but enables the Commission to differentiate according to the consumer's load factor, power factor, total consumption of electricity during any specified period etc., those are the matters having bearing on fixation of tariff and they have nothing to do with adjudication of any dispute that may arise between the consumer and the Board, when on the basis of the revised tariffs, the dues are sought to be recovered and action taken for their non-payment, as contemplated by section 24(1) of the Indian Electricity Act, 1910.

11. It will, thus, be seen that none of the provisions of the said Act entrust the Commission with any power or function to adjudicate upon the individual disputes between the customers and the State Electricity Board regarding non-payment of particular bills. Not

only that there are no provisions in this Act to deal with challenges against the notices issued on the consumers for recovery of dues of the Board or for cutting off supply due to non-payment, there are in fact provisions in other enactments which do effectively deal with the question of supply of electricity and recovery of dues.

12. The Indian Electricity Act, 1910 was enacted as stated in its preamble to amend the law relating to the supply and use of electrical energy. `Consumer' is defined in section 2(c) of that Act to mean, any person who is supplied with energy by a licensee or the government or by any other person engaged in the business of supplying energy to the public under this Act or any other law for the time being in force, and includes any person whose premises are for the time being connected for the purpose of receiving energy with the works of a licensee, the government or such other person, as the case may be. Section 22B of the Act of 1910 provides for power to control the distribution and consumption of energy, and section 23 relates to charges for energy to be made for supply of energy. It is provided in sub-section (1) of section 23 that, a licensee shall not, in making any agreement for the supply of energy, show undue preference to any person. Sub-section (3) of section 23 provides that, in the absence of an agreement to the contrary, a licensee may charge for energy supplied by him to any consumer by the actual amount of energy so supplied, or by the electrical quantity contained in the supply, or by such other method as may be approved by the State Government. The charges made by a licensee may be based upon, and vary in accordance with any of the considerations enumerated in sub-section (4) of section 23, namely, the consumer's load factor, the power factors of his load, his total consumption of energy during any stated period or the hours at which the supply of energy is required. Then comes the provision in section 24(1) relating to discontinuance of supply to consumer neglecting to pay charge, which reads as follows:-

"24(1). Discontinuance of supply to consumer neglecting to pay charge -

[1] Where any person neglects to pay any charge or any sum, other than a charge for energy, due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days notice in writing

to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and re-connecting the supply, are paid, but no longer.

[2] xxxxx "

12.1 The notice which was sought to be challenged before the Commission was issued under the above provision of section 24(1). The word `licensee' as defined in section 2(h) of the Act of 1910 means, any person licensed under Part II to supply energy. Thus, when the Gujarat Electricity Board supplies energy and its consumers do not make payment, it is empowered to issue notices under section 24(1) of the Act requiring defaulting consumers to pay the arrears within the time mentioned therein and proposing to cut off or disconnect any electric supply line through which the energy is supplied to such defaulting consumers. It would thus be seen that there are specific statutory provisions in the Act of 1910, which enable the supplier to discontinue the supply to a consumer neglecting to pay the charge for energy that may be due from such consumer. There is nothing in the Electricity Regulatory Commission Act, 1998 which can be said to be inconsistent with the said provision of section 24 of the Indian Electricity Act, 1910. The provisions having bearing on discontinuance of supply to consumer on his neglecting to pay the charge for energy consumed operate in totally a different field than the one entrusted to the State Commission, which is of determination of tariff on the basis of the provisions of the said Act and the guidelines and factors mentioned thereunder.

13. The electricity (Supply) Act, 1948 was enacted to provide for the rationalisation of the production and supply of electricity, and generally for taking measures conducive to electrical development. The considerations underlying the said central legislation were, (i) the need for uniformity in the organization and development of the `Grid System', and (ii) the necessity for the constitution of semi-autonomous bodies like Electricity Boards to administer the `Grid System'. It was provided

that, such bodies are likely to be most suitable organisations for working the `Grid System' on quasi-commercial lines. (See Statement of Objects And Reasons, Gazette of India, 1947, Part V, page 514). Section 18 of the Act of 1948 provides for general duties of the State Electricity Boards. Under clause (b) of section 18, the Board is charged with the duty to supply electricity as soon as practicable to a licensee or other person requiring such supply if the Board is competent under this Act to do so. Under section 26, the Board is invested with all the powers and obligations of a licensee under the Indian Electricity Act, 1910; and the Act of 1948, "shall be deemed to be the license of the Board for the purposes of that Act." The Board can thus issue notice under section 24(1) of the Electricity Act 1910 as a licensee for recovery of its dues and disconnection, if not paid. Under section 39 of the Act of 1948, it is provided that, where the Board itself establishes a new generating station or acquires a generating station otherwise than for the purpose of closing it down, it shall operate the station itself, but the Board may with the sanction of the State Government, make arrangements with any licensee or other person for its operation, if in the opinion of the Board it is desirable so to do. Thus, a State Electricity Board can supply the electricity and disconnect the supply if its dues are not paid. Under section 49, there is a provision for the sale of electricity by the Board to persons other than licensees and it is laid down that, subject to the provisions of the Act of 1948 and of the Regulations, if any made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit and may for the purposes of such supply frame uniform tariffs. As noted above, so far as framing of tariff is concerned, the matter is now entrusted to the State Commission under the provisions of the said Act of 1998. However, the Board remains empowered to lay down terms and conditions for supply of electricity to any person under section 49 of the Act of 1948.

13.1 The Gujarat Electricity Board has accordingly framed conditions for supply of electrical energy. Clause 21 of these conditions relates to charges for supply. Clause 27 provides for payment of bills. As per the said condition, the electricity bill shall be paid by the consumer at the Board's office within 10 days of the date of billing or as specifically provided in the agreement for supply, failing which the consumer shall be liable to pay the delayed payment charges or shall not be allowed the prompt payment discount. There are detailed

provisions as regards the manner of payment of the bills. In clause (c), there is a specific condition that, if the consumer fails to pay any bill presented to him within the said period of 10 days, the Board shall be at liberty to take action under sub-section (1) of section 24 of the Indian Electricity Act, 1910 and to cut off the supply after giving such consumer not less than 7 days clear notice in writing without prejudice to its rights to recover the amount of the bill by a suit. The condition incorporated in clause (c) is thus a mirror reflection of the provision of section 24(1) of the Act of 1910. Under condition 32, the Board reserves the right to discontinue supply of a consumer forthwith if there is reason to believe that the consumer is contravening any of the provisions of the Act, or of these conditions of supply or committing a breach of his agreement with the Board etc. In the Form of Application for supply of electricity which is provided at Annexure `A' to the Conditions for Supply, under clause (2), the consumer stipulates "to take supply and pay for the said energy, service connection and other dues including the deposit of such security as may be demanded in accordance with the rates and conditions of supply of the Board in force from time to time, and further ...."

13.2 Thus, even as per the contractual terms, the appellant had agreed to pay for the energy consumed and to the condition that if payment was not made, the Board was empowered to disconnect the supply.

14. As per Regulation 78 of the Regulations of 1999, as noted above, the Board cannot charge its customers any tariff for supply of electricity without the general or specific approval of such tariff by the Commission, and that the Board has to evolve tariff proposals as envisaged by Regulation 84 and the tariff determined by the commission and published as per the Rules would remain in force until any amendment is approved by the Commission and published as provided under Regulation 88 of the said Regulations.

14.1 The State Commission had already passed the Tariff Order on 10th October 2000 and that Tariff Order was operative. The notice dated 30th January 2002 was issued under section 24(1) of the Act of 1910 on the basis of the tariff so revised, demanding a sum of Rs.85,28,64,838=84 ps. and intimating the appellant that if the amount was not paid, its electric supply will be cut off. From the provisions of the said Act, the Act of 1910 and the Act of 1948 discussed above, it is clear that the question of examining the validity of such

notice was not at all within the domain of the State Commission. The real question was not whether the Commission had power to grant an interim relief under Regulation 68, but it was, whether any interim relief could be granted in respect of the subject matter over which the Commission had no jurisdiction. It is immaterial in what proceedings such application for interim relief is made, when the Commission has no jurisdiction over the subject matter of the interim application.

14.2 Electricity is public property, as observed by the Supreme Court in Isha Marbles v. Bihar State Electricity Board, reported in (1995) 2 SCC 648, and the consumers cannot be allowed to play traunt with public property. On revision of tariff, the Boards become entitled to draw bills on the basis of the revised tariff and resort to consequential enforcement of payment of bills prepared on such basis. When upward revision in tariffs is validly made, enforceability of such upward revision would be consequential to such revision. By not paying the bills prepared on the revised tariffs, a consumer utilises the amount so withheld for his commercial activities and the Board suffers a consequential financial loss in respect of the unpaid bills prepared on the revised tariffs. This is why in Kerala State Electricity Board v. M.R.F. Ltd., reported in (1996) 1 SCC 597, the Supreme Court held that it would be lawful, conforming to equity and well-established principle of restitution for the Board to claim interest on the unpaid portion of the bill drawn on the basis of revised tariffs.

15. For the above reasons, we find ourselves in complete agreement with the reasoning of the Commission for holding that it had no jurisdiction to entertain such applications for staying the implementation of the notice issued under section 24(1) of the Indian Electricity Act, 1910 by the Gujarat Electricity Board. Both these appeals are, therefore, dismissed. There shall be no order as to costs.

16. At this stage, the learned senior counsel appearing for the appellant prays for staying the operation of this order for two weeks. The request is objected to on behalf of the respondent. A large amount of nearly Rs.85 crores is due to be paid to the GEB since long and from the events that have occurred, it appears that the appellant has been only buying time. We do not find any justifiable reason to stay our order and delay the recovery of the dues or taking of action under

section 24(1) of the Act of 1910 any further. The request is, therefore, rejected.

APRIL 04, 2002 [R.K.ABICHANDANI, J.]

[KUNDAN SINGH, J.]

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